

OFFICE OF THE ATTORNEY GENERAL



92-00335

JIMMY EVANS
ATTORNEY GENERAL
STATE OF ALABAMA

JUL 10 1992

ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (205) 242-7300

Honorable Johnny M. Morrow
Member, House of Representatives
Route 6, Box 262-A
Russellville, AL 35653

Tax Assessor - Public
Information - Public Records

Records of tax assessor's
office are public records to
which public has right of
access during ordinary business
hours. The integrity of
original records must be
assured without limiting
public's right of access.

Dear Representative Morrow:

This opinion is issued in response to your request for an
opinion from the Attorney General.

QUESTIONS

1. Are Alabama property record cards and the work cards of the county tax assessor's office public records as defined under § 36-12-40, Code of Alabama 1975?
2. If the answer to question 1 is affirmative, can access to such records be denied or extremely limited?

3. Can the tax assessor deny or extremely limit the copying of the entire property record card?
4. Does the use of erasable pencil writing on property record cards violate § 36-12-3, Code of Alabama 1975, which requires public records to have permanence?
5. Does allowing direct access, supervised or unsupervised, to public tax records in the tax assessor's record room violate Alabama law?

FACTS, LAW AND ANALYSIS

Section 36-12-40, Code of Alabama 1975, provides in pertinent part as follows:

"Every citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute."

In the case of Stone v. Consolidated Publishing Company, 404 So.2d 698 (Ala. 1981), the term "public writing" as used in § 36-12-40 was held to be such a record as is reasonably necessary to record the business and activities required to be done or carried on by a public officer so that the status and condition of such business and activities can be known by citizens. In the case of Chambers v. Birmingham News Company, 552 So.2d 854 (Ala. 1989), the Court held that there is a presumption in favor of public disclosure of public writing, and that limitations to the broad language of § 36-12-40 will, absent legislative action, be determined by applying a rule of reason. Such exceptions as may be recognized must be strictly construed and must be applied only in situations where it is readily apparent that disclosure would result in undue harm or embarrassment to an individual or where the public interest will clearly be adversely affected, when weighed against the public policy considerations suggesting disclosure.

In the case of Walsh v. Barne, 541 So.2d 33 (Ala.Civ.App. 1989), the Court of Civil Appeals noted that § 36-12-40 makes no distinction between disclosure for profit or otherwise.

Section 36-12-41 provides:

"Every public officer having the custody of a public writing which a citizen has a right to inspect is bound to give him, on demand, a certified copy of it, on payment of the legal fees therefore, and such copy is admissible as evidence in like cases and with like effect as the original writing."

In an opinion to the Honorable Bill Thrash, Tax Assessor of Cleburne County, dated April 10, 1981, AG No. 81-00320, this office held that the documents maintained in the office of the tax assessor constitute public records to which every citizen has a right of inspection and the right to make copies. In that opinion we observed:

". . . However, members of the public do not have unbridled access to these documents. The proper custodian of the records, i.e., the tax assessor, has the authority to set reasonable limitations upon the public's access to these records so that the functions of the office of the tax assessor will not be impaired and so that the expense to that office will be minimized in providing this access to the public In summary, the general public has a right to inspect and copy the records maintained in the office of the tax assessor, but the tax assessor may enforce reasonable rules and restrictions on that access, including the charging of a reasonable fee for providing copies of these records."

See, also, an opinion to the Honorable Wayland Cooley, dated November 4, 1987, AG No. 88-00047.

The Supreme Court considered the question of whether or not a city finance department could require a citizen requesting access to public records fill out a form disclosing name, date, and description of the documents requested, and the reason why the citizen wished to see those records in the case of Blankenship v. City of Hoover, 590 So.2d 245 (Ala. 1991). The Court observed:

"There is no evidence that the finance department's policy requiring individuals to fill out a request form before gaining access to public documents or records, such as the one at issue, was implemented by the finance department in order to dissuade or prevent any individual from acquiring access to public documents or records; nor was there any evidence to show that the request form allowed the finance director the power to hinder access or refuse disclosure based on perceived necessity or established office policy. Rather, the evidence established that the information provided by the request form would enable the city to assure that the requested inspection was for legitimate or proper purpose and would allow the city to maintain the integrity of its records in a practical and workable manner, without undue interference."

While control of original documents in such offices is essential to the proper function of said offices, restrictions must not be such as to dissuade or prevent a citizen from having access to such documents. Such access must be timely and reasonable. Ultimately, the question of what is or is not reasonable is a factual matter which can only be resolved by a court of competent jurisdiction.

Turning now to a consideration of the permanence of these records, it seems obvious that in the course of carrying out the duties of the office of the tax assessor, members of the staff may make pencil notations on property record cards and the like. However, where such notations constitute such a record as is reasonably necessary to record the business and activities required to be done or carried on by that office, they should either be made in ink or rendered unerasable by other means. Section 36-12-3, Code of Alabama 1975, relating to the documents of public officers and employees, sets forth the standard that papers, inks, and the like of a permanent and nondestructible character should be used by public officials. It seems almost unnecessary to comment that permanent public records should be produced in such a manner as to remain permanent. It also seems almost superfluous to comment that even documents made in permanent ink can be subject to tampering and alteration, and therefore a prudent officer

Honorable Johnny M. Morrow
Page 5

should take reasonable steps to see to it that no such alterations can take place. However, such steps cannot include denial of access during reasonable business hours.

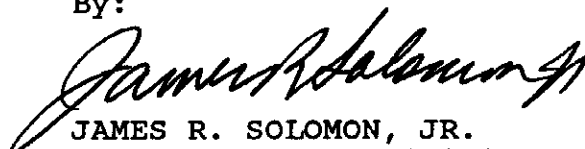
CONCLUSION

In view of the foregoing your several questions are answered as follows: The records of the county tax assessor's office are public records as defined in § 36-12-40, Code of Alabama 1975, and there is no exception to their disclosure or the right of the public to have access to such documents. Any citizen requesting a copy of any such document should be given a copy upon payment of reasonable fees therefore. Access to such records should be at any time that the office is open during normal office hours. Reasonable steps should be taken to allow access at other times if the office is open at other times. Access must be uniform and nondiscriminatory so that all members of the public who seek such access are treated in the same way.

I hope this sufficiently answers your questions. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS
Attorney General
By:


JAMES R. SOLOMON, JR.
Chief, Opinions Division

JE/PCD/jho

0956N